

Lewis County Community Development Staff Report: Findings, Conclusions and Recommendations for: Shoreline Variance Request (SHD24-0002)

Project Applicant: Mark Welsh

Project Consultant: Alexander Callender (Land Services Northwest)

Project Description: The applicant has requested a shoreline variance to reduce the 150-foot shoreline buffer of Big Creek to construct a single-family residence with associated utilities and new gravel driveway. The variance request is to reduce the 150-foot shoreline buffer to 36 feet for the residence and 81 feet for the septic drainfield. A No Net Loss of Ecological Function Report and Mitigation Plan has been prepared for the reduced setback from Big Creek. The proposed use (single-family residence and associated utilities) is authorized through a letter of shoreline exemption (WAC 173-27-040(2)(g)).

Project Location: The project is located at 110 Mountain View Dr N, Ashford, WA on tax parcel number 011030034000 in Lewis County, WA - Section 36, Township 15N, Range 06E, WM. Shoreline application file number SHD24-0002.

Project Parcel Number: 011030034000

Shoreline Stream: Big Creek

Shoreline Environment: Shoreline Residential

Comprehensive Plan Designation: Residential Settlement (LAMIRD)

Zoning Classification: Rural Residential Center - 2 Acre (RRC-R2)

Project Vesting:

The project is vested under the Lewis County 2021 Shoreline Master Program (SMP) which includes Lewis County Code 17.38 for non-agricultural critical resource areas. Specific review under the applicable SMP sections will continue below.

Background Information:

The shoreline variance request application was submitted on June 27, 2024. The application packet permits including the JARPA form, site plan, MSR application, letter from Lewis County Community Development Department - pending MSR, habitat assessment report, comments received from WDFW and comments received from ECY with follow up correspondence from the County. (Staff Exhibit 1- <https://lewiscountywa.gov/departments/community-development/current-planning-applications/shd24-0002-welsh-shoreline-variance/> located under the Subheading "Application Documents" for a total of 7 document files on the webpage).

The shoreline variance application was determined complete on July 17, 2024 to begin review (Staff Exhibit 2). The Shoreline Notice of Application was published on August 7, 2024 providing a 30-day comment period (Staff Exhibit 3).

A Master Site Review (MSR24-0439) for critical areas and resource lands will be conditionally approved after the public hearing and approval of SHD24-0002 by the Harings Examiner and the Washington State Department of Ecology. The following **Condition of Approval** should be included on the shoreline permit:

- The applicant/ property owner shall comply with the conditions of development identified in the Master Site Review file number MSR24-0439. If there is a conflict between the MSR conditions of approval and another permit's conditions of approval, the more restrictive conditions of approval shall apply.

This project is exempt from SEPA review under WAC 197-11-800(l)(b)(i) and WAC 197- 11-800(6)(e).

The proposed shoreline project was reviewed under the Lewis County 2021 Shoreline Master Program (SMP) and other applicable Lewis County Codes (LCC) in effect at the time of complete application. The Shoreline Notice of Application was published on August 7, 2024 providing a 30-day comment period (Staff Exhibit 3), and the Shoreline Notice of Public Hearing was published on December 4, 2024 meeting the minimum 15-day noticing requirements (Staff Exhibit 4). The application requirements, notice requirements and hearing notice requirements of Chapter 7 of the SMP have been met. The applicable provisions of the SMP and staff's findings for compliance with the provisions are listed below.

History of the site and the Shoreline Management Act:

On October 19, 1964, the plat of Paradise Estates was recorded creating fifty-three (53) residential lots south of Big Creek. Then on July 8, 1965 the plat of Paradise Estates No. 2 was recorded which brought the total number of lots to two hundred and seventy-two (272). In 1966, the plat of Paradise Estates No. 3 was recorded, bringing the total number of lots in the Paradise Estates subdivision to three hundred and eighty-five (385). The typical size of the residential lots bordering on the north and south of Big Creek, including the subject parcel, are each roughly 0.15 to 0.25 acres in size.

The Washington State Shoreline Management Act was established in 1971. In September 2021, the County adopted a new Shoreline Master Program (SMP), updated shoreline environment maps and county code provisions to be consistent with the revisions of the Washington State Shoreline Management Act (SMA). With the adoption of the Lewis County 2021 SMP this project area is now within the Shoreline Residential Environment.

Mark Welsh (applicant and current property owner) purchased the subject parcel (009800195000 - Lot 21, Paradise Estates) on October 19, 2023. The parcel is accessed by a driveway off Mountain View Dr. N and the adjacent parcel contains a single-family residence. The subject parcel is relatively flat in the area between Mountain View Dr. N and the top of the bank of Big Creek. The previous development on the subject parcel consists of an approximately 16x20 cabin that has is in disrepair.

2021 Lewis County Shoreline Master Program Findings:

SMP Chapter 1:

Applicability: The project is located within the Shoreline Jurisdiction of Big Creek and/or its associated wetlands. The SMP applies to the project and as proposed, the project is exempt from the shoreline substantial development permit process, but is still required to meet the regulations of the SMP. When a development or use is proposed that does not comply with the bulk, dimensional and performance standards of the SMP, such development can only be authorized by approval of a shoreline variance. A letter of shoreline exemption file number SHE24-0020 will be issued with Conditional Approval pending the Washington State Department of Ecology's final approval of the Shoreline Variance Request. The following **Condition of Approval** should be included on the shoreline permit:

- The applicant/property owner shall comply with the conditions of development identified in the Letter of Shoreline Exemption file number SHE24-0020. If there is a conflict between the Shoreline Exemption's conditions of approval and another permit's conditions of approval, the more restrictive conditions of approval shall apply.

Shoreline Jurisdiction: Yes, Shoreline Residential Environment

Shoreline of Statewide Significance: No, Big Creek is not listed as Shoreline of Statewide Significance.

SMP Chapter 3:

Shoreline Environment Designations:

Shoreline Residential Management Policies:

1. Preserve ecological functions by establishing development standards for shoreline height, shoreline buffers, building setbacks, density, impervious surface coverage, shoreline stabilization, critical area protection, and water quality protection to assure no net loss of ecological functions in shoreline jurisdiction.
2. Provide public access and joint use for community recreational facilities, where feasible and applicable for multifamily developments, residential developments containing more than four lots, and recreational developments.
3. Ensure access, utilities, and public services are available and adequate to serve existing needs and or planned future development.
4. Limit commercial development to water-oriented uses.

Staff Response: The shoreline variance request is to allow for the construction of a single-family residence and associated utilities. Further review will analyze the design of the project and its consistency with the shoreline ecological functions and development standards. No community recreational facilities nor commercial development are proposed on this parcel. As conditioned in this report, the project is consistent with these policies.

SMP Chapter 4: General Regulations:

SMP 4.02 Archaeological and Historic Resources:

Regulations:

- A. Permits issued in areas documented to contain archaeological resources shall require a site inspection or evaluation by a professional archaeologist in coordination with affected tribes and DAHP prior to any ground disturbance. Failure to complete a site survey shall be considered a violation of the shoreline permit.
- B. Where a professional archaeologist has identified an area or site as having significant value, or where an area or site is listed in local, State, or Federal historical

registers, the Shoreline Administrator may condition the development approval to preserve the features. Potential conditions may include measures to preserve or retrieve the resources, modify the site development plan to reduce impacts, or mitigate the impacts as authorized through the State Environmental Policy Act (SEPA), or other County, State, or Federal laws.

- C. The applicant shall stop work immediately and contact the County, the DAHP, and affected tribes if any archaeological resources are uncovered during work within shoreline jurisdiction.

Staff Response: There are no known or mapped archaeological or historic sites within or near the project area. The Shoreline Notice of Application was submitted to the potentially affected tribes on August 7, 2024 (Staff Exhibit 3). No comments, concerns or recommended conditions were submitted from the potentially affected Tribes. As conditioned below these criteria have been met. The following **Conditions of Approval** shall be listed on the shoreline permit:

- In the event any archaeological or historic materials are encountered during project activity, work in the immediate area (initially allowing for a 100 foot buffer) must stop and the following actions taken: 1) Implement reasonable measures to protect the discovery site, including any appropriate stabilization or covering; 2) Take reasonable steps to ensure the confidentiality of the discovery site; and 3) Take reasonable steps to restrict access to the site of discovery.
- The project proponents will notify the concerned Tribes and all appropriate county, state, and federal agencies, including the Department of Archaeology and Historic Preservation (DAHP). The agencies and Tribe(s) will discuss possible measures to remove or avoid cultural materials, and will reach an agreement with the project proponent regarding actions to be taken and disposition of material.
 - If human remains are uncovered, appropriate law enforcement agencies shall be notified first, and the above steps will be followed. If the remains are determined to be Native, consultation with the affected Tribes will take place in order to mitigate the final disposition of said remains.

SMP 4.03 Environmental Impacts and Mitigation:

Regulations:

- A. The environmental impacts of development proposals shall be analyzed and include measures to mitigate environmental impacts not otherwise avoided or mitigated by compliance with the SMP and other applicable regulations.

- B. Mitigation measures shall be considered and applied in the following sequence of steps, listed in order of priority:
1. Avoiding the impact altogether by not taking a certain action or parts of an action;
 2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts;
 3. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
 4. Reducing or eliminating the impact over time by preservation and maintenance operations;
 5. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and
 6. Monitoring the impact and the compensation projects and taking appropriate corrective measures.
- C. In determining appropriate mitigation measures applicable to development in shoreline jurisdiction, lower priority measures should be applied only where higher priority measures are determined to be infeasible or inapplicable.
- D. Mitigation shall not be required that exceeds what is necessary to assure the development will result in no net loss of ecological functions in shoreline jurisdiction.
- E. When compensatory measures are appropriate pursuant to the mitigation priority sequence above, preferential consideration shall be given to measures that replace the impacted functions directly and in the immediate vicinity of the impact. However, alternative compensatory mitigation measures that have been identified within a watershed plan, and address limiting factors or other critical resource conservation needs in the shoreline jurisdiction may be authorized. Authorization of compensatory mitigation measures may require appropriate safeguards, terms, or conditions as necessary to ensure no net loss of ecological functions.

Staff Response: Prior to submitting the shoreline variance request, the applicant submitted one Master Site Review (MSR) application (MSR24-0439). It was determined the various buffer reduction options in the SMP would not provide a reasonable siting area on the parcel, and that a shoreline variance could be requested.

The total impervious surface existing on the subject parcel within the standard 150-foot shoreline buffer is approximately 350 square feet. This square footage includes a dilapidated cabin and deck. The proposed impervious surface will be located

within the standard 150-foot shoreline buffer, but located south of the requested 36-foot shoreline buffer. The proposed impervious surface will be approximately 2,082 square feet. Six mature trees (cottonwood) will be removed for the proposed development to construct the septic system and single-family residence. No development activities or vegetation removal are proposed within the 36-foot shoreline buffer.

The No Net Loss Mitigation Plan outlines impact avoidance and minimization measures of the project; provides a list of mitigation measures and best management practices; indicates six trees will be removed to accommodate the new single-family residence and the septic system (Staff Exhibit 1 - Application Documents; Habitat Assessment Report). Neither the shoreline variance site plan nor the No Net Loss Mitigation Plan figures graphically depicted the location of the six mature trees to be removed to construct the single-family residence and the septic system. However, the JARPA, the Report, and the project narrative do provide written descriptions indicating the tree removal will be in the location of the single-family residence and the septic system; no vegetation will be removed within the requested 36-foot shoreline buffer; all native vegetation will remain undisturbed; and removal of invasive non-native plants found will be performed as outlined in the mitigation plan (Staff Exhibit 1 - Application Documents).

The SMP mitigation sequencing looks to avoidance first, then to minimizing the disturbance, and finally to compensate for any unavoidable impacts and ensure no net loss. The proposal meets the mitigation sequencing identified above. As conditioned below these criteria have been met. The following **Conditions of Approval** shall be listed on the shoreline permit:

- No vegetation removal or ground disturbance is authorized in the area between the ordinary high water mark and the northern line of the proposed 36-foot shoreline buffer.
- Temporary construction fencing to identify the construction limits shall be installed on the northern line of the proposed 36-foot shoreline buffer prior to any ground disturbance.
- Ground disturbance is limited to that necessary for implementation of project elements.
- The construction staging area and materials stockpile area shall be landward of the northern line of the proposed 36-foot shoreline buffer.
- The mitigation plantings within the 36-foot shoreline buffer shall be planted prior to final inspection of the building permit for the single-family

residence. The mitigation plantings compensating for the removal of vegetation in the development site shall be provided at a 1:1 ratio.

- The property owner shall ensure at least a 90% continuing survival rate of the mitigation plantings, and replant any of the trees and/or shrubs that do not survive the initial planting.

SMP 4.04 Critical Areas and Shoreline Vegetation Conservation:

Regulations:

A. Critical Areas Ordinance Adopted and Modified.

1. Whether or not a shoreline permit or written statement of exemption is required, the provisions of this section shall apply to all uses, alterations, or developments within shoreline jurisdiction or shoreline buffers. All shoreline uses and activities shall be located, designed, constructed, and managed to protect the ecological functions and ecosystem wide processes provided by critical areas and shoreline vegetation. To ensure consistency with the SMA, exceptions to the applicability of the regulations in LCC Chapters 17.38 in the shoreline jurisdiction are listed below:
 - c. Within shoreline jurisdiction, the reasonable use variance procedures in LCC 17.38.101 are not available for relief from critical area standards. Instead, applicants seeking relief from critical area standards shall apply for a shoreline variance under SMP Section 7.04.03.

Staff Response: The provisions of this section apply to the proposed application. The current proposal as identified on the site plan (Staff Exhibit 1 - Application Documents; Site Plan) has been located and designed to protect the ecological functions and ecosystem wide processes provided by shoreline vegetation. The applicant applied for a shoreline variance. The following **Conditions of Approval** shall be listed on the shoreline permit:

- Future development shall be limited as shown on the shoreline variance request site plan (Staff Exhibit 1 - Application Documents; Site Plan).

B. Shoreline Buffers.

1. The required critical area buffers for Type S streams, as established in SMP Table 41: Shoreline Buffers, shall be considered shoreline buffers.
3. The buffers for all other critical areas shall be established in accordance with the standards of LCC Chapters 17.38, except as modified by SMP Section 4.04.02(A).
4. New uses and development that are not water-dependent, water-related, or water-enjoyment, accessory to water-dependent, water-related, or water-

enjoyment uses or development, or that do not facilitate public access to waters of the State generally will not be authorized in shoreline buffers. Some uses or developments not meeting the criteria above may be authorized through buffer averaging or through issuance of a shoreline variance.

5. SMP Table 4-1: Shoreline Buffers establishes shoreline buffers by shoreline environment designation.
9. Building setbacks of 15 feet are required from the landward edge of the shoreline buffer in accordance with LCC 17.38.1030. Building setbacks are used to protect the shoreline buffer from disturbance during construction and from the impacts related to use of a structure. Where no shoreline buffer is required in Table 4-1, no building setback shall be required.

Staff Response: SMP Table 4-1 lists Residential Development uses as having a 150-foot shoreline buffer within the Shoreline Residential Environment. The property owner has requested a shoreline variance as identified in SMP 4.04.02.B.4 above to reduce the 150-foot shoreline buffer to a 36-foot shoreline buffer of the 15-foot building setback to a 0-foot building setback. The project site contains other critical areas such as mapped 150-foot Type F stream buffer, 100-year flood zone and floodway, critical aquifer recharge area, and a mapped volcanic hazard area.

There are no mapped wetlands on the subject parcel. The other mapped critical areas will be discussed in further detail in this report. As conditioned in this *staff* report, these regulations have been met.

D. General Buffer Regulations

1. Shoreline Buffers: The following new uses and activities are allowed within shoreline buffers without a shoreline variance, when located, constructed, and maintained in a manner that minimizes adverse impacts on shoreline ecological functions, and when otherwise in compliance with this SMP:
 - a. Uses and activities authorized to locate in shoreline buffers in SMP Chapter 5: Specific Shoreline Use Policies and Regulations, SMP Chapter 6: Shoreline Modification Policies and Regulations, and LCC 17.38.130.

Staff Response: New septic systems are authorized within the 150-foot shoreline buffer when located as far landward of the OHWM as feasible for site development. The proposed development as shown on the shoreline variance request site plan (Staff Exhibit 1 -Application Documents; Site Plan) identifies the location of the septic tank, primary drain field, and reserve drain field to be located as far landward from the OHWM of Big Creek as possible given the small lot size, narrow lot width

and driveway location. As conditioned in this report, these criteria have been met.

E. Vegetation Conservation Standards.

1. Shoreline buffers protect the ecological functions of the shoreline, help to reduce the impacts of land uses on the water body or aquatic resource, and provide a transition between aquatic and upland areas.
2. Authorized uses shall be designed to avoid removing existing native vegetation to the maximum extent feasible within shoreline and critical areas buffers consistent with safe construction practices, and other provisions of this section. Any impacts to existing native vegetation must follow the mitigation sequence in SMP Section 4.03 above and comply with any applicable critical area regulations, as modified in SMP Section 4.04.02(A) above.
3. Removal of vegetation within shoreline and critical areas buffers shall require a critical area report and/or a mitigation plan in coordination with the requirements of the applicable critical areas regulations. The Shoreline Administrator may require a critical area report for CAO-exempt activities if necessary to document compliance with the provisions in the SMP.
4. Removal of native vegetation from shoreline buffers must be compensated at a minimum 1:1 ratio, which the Shoreline Administrator may increase if necessary to assure no net loss of shoreline ecological functions. Increases may be necessary to compensate for temporal losses, uncertainty of performance, and differences in ecological functions and values.
5. Mitigation ratios shall be based on a scientifically valid measure of habitat function, value, and area. Critical area reports shall include a description of how the proposal complies with the mitigation sequence in SMP Section 4.03 and how mitigation areas will be monitored and maintained to ensure no net loss of shoreline ecological functions.
6. Vegetation conservation standards shall not apply retroactively to existing, legally established uses and developments. Existing, lawfully established landscaping and gardens within shoreline buffers may be maintained in their existing condition. In the context of this regulation, maintenance includes, but is not limited to, mowing lawns, weeding, removal of noxious and invasive species, harvesting and replanting of garden crops, pruning, and replacement planting of ornamental vegetation or indigenous native species to maintain the condition and appearance of such areas.
7. Clearing of invasive, noxious non-native vegetation in shoreline buffers is allowed by hand labor or with light equipment. Removal of noxious weeds as listed by the State in Chapter 16-750 WAC is allowed in a manner consistent with State Noxious Weed Control Board regulations. Native vegetation shall be

promptly reestablished in the disturbed area.

8. In shoreline buffers, pruning shall comply with the National Arborist Association pruning standards, unless the tree is a hazard tree as defined in LCC 17.10.080. Trees that are felled in shoreline buffers should be left in place.
9. In those instances where the management of vegetation required by this Section conflicts with provisions in State, Federal or other flood hazard agency documents that govern licensed or certified flood hazard reduction measures, the requirements of the SMP will not apply. The applicant shall submit documentation of conflicting provisions with a shoreline permit application and shall comply with all other provisions of the SMP that are not strictly prohibited by certifying or licensing agencies.

Staff Response: The proposed project, including the removal of the six mature trees, complies with the mitigation sequencing in SMP Section 4.03 as reviewed above in this staff report. A No Net Loss Mitigation Plan with mitigation was provided as part of the application documents (Staff Exhibit 1 - Application Documents; Habitat Assessment Report). Also as reviewed and conditioned above in SMP Section 4.03, the applicant is providing a mitigation plan to compensate for the 2,082 sq. ft. of riparian buffer impacts as well as the six mature trees that will be cut for project development at a 1:1 ratio. As conditioned in this staff report, these criteria have been met.

F. Revegetation.

1. Surfaces that are cleared of vegetation in shoreline or critical area buffers, aside from normal maintenance described in SMP Section 4.04.02(E)(6), and are not developed must be replanted within one year. Replanted areas shall be planted and maintained such that within three years the vegetation cover is at least 90% reestablished.
2. Vegetation shall be planted in similar quantities and species to what existed previously on the site to achieve no net loss of ecological function. Disturbed ornamental landscapes, including grass, may be replaced with similar species, unless mitigation is necessary to address project impacts.
3. Native plants are preferred for all revegetation. Non-native species on the County's list of invasive species shall not be allowed.

Staff Response: The Mitigation Plan states revegetation should not be necessary, enhancement will be provided in disturbed areas to maintain functions of the shoreline (Staff Exhibit 1 - Application Documents; JARPA, and habitat assessment report). As conditioned in this staff report, these criteria have been met.

SMP 4.05 Flood Hazard Management:

Regulations:

- A. All proposed flood hazard management measures shall comply with the County's Comprehensive Flood Hazard Management Plan.
- B. Development in floodplains shall not increase flood hazards. No development is allowed within the SMP flood course or floodway in shoreline jurisdiction, unless a hydraulics and hydrology study (H & H Study) shows that it is:
 - 1. Not in the SMP flood course or floodway; or
 - 2. will not impact the pre-project base flood elevation, floodway elevations, or floodway data widths.
- C. Within the CMZ, SMP flood course or floodway, new development or uses, including subdivision of land, shall not be established when it would be reasonably foreseeable that the development or use would require new structural flood hazard reduction measures.
- D. New development within floodways, the SMP flood course, and the CMZ shall not interfere with the process of channel migration or cause a net loss of ecological functions. If existing CMZ studies are not available for an area of known channel migration, a site analysis may be required to ensure that development does not interfere with the process of channel migration. Areas of known channel migration are shown in the SMP Map Folio Figure 28 in the Shoreline Inventory and Characterization.
- E. Development in the CMZ, SMP flood course, and floodways, is limited to:
 - 1. Actions that protect or restore ecosystem-wide processes or ecological functions;
 - 2. Forest practices in compliance with the FPA;
 - 3. Existing and ongoing agricultural practices, provided no new restrictions to channel movement occur;
 - 4. Mining uses conducted consistent with the shoreline environment designation and the provisions of WAC 173-26-241(3)(h);
 - 5. Bridges, utility lines, and other public utility and transportation structures where no other feasible alternative exists or the alternative would result in an unreasonable and disproportionate cost;
 - 6. Repair and maintenance of an existing legal use, provided that the repair and maintenance does not cause significant ecological impacts or increase flood hazards to other uses;
 - 7. Modifications or additions to an existing nonagricultural legal use, provided that channel migration is not further limited and that the new development includes appropriate protection of ecological functions;

8. Development in UGAs, as defined in Chapter 36.70A RCW, where existing structures prevent active channel movement and flooding; or
 9. Measures to reduce shoreline erosion, if it is demonstrated that the erosion rate exceeds that which would normally occur in a natural condition, the measure does not interfere with fluvial hydrological and geomorphological processes normally acting in natural conditions, and the measure includes appropriate mitigation of impacts to ecological functions associated with the river or stream.
- F. New structural flood hazard management measures may be permitted if consistent with the applicable provisions in SMP Chapter 6: Shoreline Modification Policies & Regulations.
- G. New publicly-funded structural flood hazard management measures, including dikes and levees, shall dedicate and improve public access except in those instances as listed in SMP Section 4.06.02(B).
- H. Removal of gravel for flood management purposes shall be permitted only after a biological and geomorphological study demonstrates that the extraction:
1. Provides a long-term benefit to flood hazard management;
 2. Does not result in a net loss of ecological functions; and
 3. It is part of a comprehensive flood management solution.

Staff Response: The project site is located in the mapped 100-year floodplain and a Flood Development Permit will be required. As previously discussed MSR24-0439 will be approved after approval from Ecology. A requirement of the MSR approval will be the applicant apply for a Flood Development Permit. The project site is not located in any mapped floodway or Channel Migration Zone (CMZ). No shoreline stabilization or flood control devices are proposed as part of this application. Additionally, no gravel removal within the floodplain is proposed as part of this application. As conditioned in this staff report, these regulations have been met.

SMP 4.06 Public Access:

Regulations:

- A. Shoreline public access shall be required for the following shoreline developments and uses:
1. Shoreline recreation in accordance with SMP Section 5.13;
 2. New structural public flood hazard reduction measures, such as dikes and levees;
 3. Shoreline development by public entities, including the County, port districts, State agencies, and public utility districts;
 4. New marinas when water-enjoyment uses are associated with the marina;

and

5. All other development and use types that are required to incorporate shoreline public access as identified in the SMP, or other State or Federal requirements.
- B. Shoreline public access is not required when any of the following conditions are present:
1. The subdivision of land into four or fewer parcels;
 2. A development consisting of a building containing four or fewer dwelling units;
 3. Unavoidable health or safety hazards to the public exist that cannot be prevented by any feasible means;
 4. Inherent security requirements of the use cannot be satisfied through the application of alternative design features or other solutions;
 5. Significant environmental impacts will result from the public access that cannot be mitigated;
 6. Significant undue and unavoidable conflict between any access provisions and the proposed or adjacent uses would occur and cannot be mitigated;
 7. The cost of providing the access, easement, or amenity is unreasonably disproportionate to the total long-term cost of the proposed development;
 8. Legal limitations preclude public access;
 9. The subject site is separated from the shoreline waterbody by intervening public or private improvements such as roads, railroads, existing structures, and/or other similar improvements, and public access is not desirable or feasible; or
 10. Adequate public access already exists along the subject shoreline and there are no gaps or enhancements that need to be addressed;

Staff Response: The proposed project is for the construction of one single- family dwelling and associated utilities, and is exempt from the public access requirements under SMP 4.06.02.B.2. As proposed, the project has been reviewed and determined that public access is not required.

SMP 4.07 Water Quality:

Regulations:

- A. All development in shoreline jurisdiction shall comply with the appropriate requirements of the SMP and the latest edition of the Stormwater Management Manual as prepared by Ecology.
- B. Septic systems should be located as far landward of the OHWM and flood course as feasible. Where the systems cannot be located outside of a shoreline or critical

area buffer, the system may be sited in accordance with the requirements in 4.04.02(D).

- C. Uses in Critical Aquifer Recharge Areas shall meet the applicable requirements in LCC 17.38.
- D. Potentially harmful materials, including but not limited to oil, chemicals, tires, or hazardous materials, shall not be allowed to enter any body of water or wetland, or be discharged onto the land in shoreline jurisdiction. Potentially harmful materials should be stored outside of shoreline jurisdiction if feasible, and shall be maintained in safe and leak-proof containers.
- E. Herbicides, fungicides, fertilizers, and pesticides shall not be applied within 25 feet of a water body, except by a qualified professional in accordance with State and Federal laws. Further, pesticides subject to the final ruling in *Washington Toxics Coalition, et al., v. EPA* shall not be applied within 60 feet for ground applications or within 300 feet for aerial applications of the subject water bodies and shall be applied by a qualified professional in accordance with State and Federal law.

Staff Response: A condition of approval in MSR24-0439 will require the project to obtain all other local, state and federal permits and approvals. The MSR will be approved following approval from Ecology. The application documents state the project is designed to the Washington State Department of Ecology's most current stormwater manual (Staff Exhibit 1 - Application Documents; JARPA). The proposed septic system is located as far landward of the OHWM as feasible. The septic system has been located in accordance with the requirements in 4.04.02(D).

The proposed development site is located in a mapped critical aquifer recharge area with Category II soils. Uses in Critical Aquifer Recharge Areas shall meet the applicable requirements in LCC 17.38. The following code sections relate to the protection of critical aquifer recharge areas specific to this project: LCC 17.38.810, 17.38.830(2)(e). LCC 17.38.830(2)(3) states that development with an on-site domestic septic system at a gross density greater than one system per residence per acre is permitted with the submittal of an approved Critical Aquifer Recharge Area Report. However, LCC 17.38.810(1)(a) states that the section does not apply to land uses and/or activities that exist as of the date of the regulation. The proposed property was part of a residential plat recorded in 1965. The residence and septic system do not increase the scale or intensity of the residential development in the area as the intended use of this lot at platting was for a single family residence to be served by an on-site septic system.

The application documents identify Best Management Practices (BMPs) that will be used during the project construction (Staff Exhibit 1 - Application Documents; JARPA, and habitat assessment report). As conditioned below these criteria have been met. The following are required to be listed as **Conditions of Approval** for the shoreline permit:

- The applicant shall obtain all other required local, state and federal permits and approvals.
- The temporary erosion and sedimentation control measures will be implemented at the beginning of the construction process. The written temporary erosion and sedimentation control plan, including BMPs, shall be submitted to and approved by the shoreline administrator prior to issuance of the building permit for the single-family residence.
- BMPs will include covering of exposed soils, managing runoff, and revegetating temporary disturbed soils as soon as possible following the onset of construction.
- Potentially harmful materials, including but not limited to oil, chemicals, tires, or hazardous materials, shall not be allowed to enter any body of water or wetland, or be discharged onto the land in shoreline jurisdiction, including any ditch, swale or other non-impervious surfaced area where migration to the aquifer is a reasonable likelihood. Potentially harmful materials should be stored outside of shoreline jurisdiction if feasible, and shall be maintained in safe and leak-proof containers.
- Herbicides, fungicides, fertilizers, and pesticides shall not be applied within 25 feet of a water body, except by a qualified professional in accordance with State and Federal laws. Further, pesticides subject to the final ruling in *Washington Toxics Coalition, et al., v. EPA* shall not be applied within 60 feet for ground applications or within 300 feet for aerial applications of the subject water bodies and shall be applied by a qualified professional in accordance with State and Federal law.

SMP Chapter 5:

Specific Shoreline Use Regulations:

SMP 5.02 General Shoreline Use:

Regulations:

- A. Use and development standards shall not apply retroactively to existing, legally established structures, or uses and developments in place at the time of the

adoption of the SMP update. Existing structures, uses and developments, including residential appurtenances, may be maintained, repaired, and operated within shoreline jurisdiction and the shoreline buffers established in the SMP.

- B. Development shall comply with the most restrictive bulk and dimensional requirements in LCC Title 17 or SMP Section 5.04.
- C. Accessory uses, such as parking, stormwater management facilities, and utilities shall be located outside of shoreline and critical area buffers, and associated building setbacks, unless authorized in SMP Section 4.04.02(D).
- D. Shoreline uses and developments shall be designed to complement the setting of the property and minimize glare. Shoreline applicants shall demonstrate efforts to minimize potential impacts to the extent feasible.

Staff Response: Previously in this staff report, the proposed septic system was reviewed and determined to be located as far landward from the OHWM as feasible, and consistent with SMP Section 4.04.02(D). The proposed development of a single- family residence and associated utilities in the Shoreline Residential Environment located within a residential subdivision that was established prior to both the state and local shoreline regulations. Due to the narrow lot width and the request for reduce shoreline buffer, all outdoor lighting should be hooded and shielded to prevent glare as seen by adjacent property, vehicles on public roadways and to minimize potential effects on wildlife. As conditioned below these criteria have been met. The following are required to be listed as

Conditions of Approval for the shoreline permit:

- All outdoor lighting shall be hooded and shielded to prevent glare as seen by adjacent properties, vehicles on public roadways and to minimize potential effects on wildlife.

SMP 5.03 Allowed Shoreline Uses:

- A. Table 5-1: Permitted, Conditional, and Prohibited Uses establishes the uses and development allowed or prohibited in each shoreline environment designation. Uses and developments allowed in the table must, in all cases, be consistent with other applicable provisions of the SMP in order to be authorized. Where there is a conflict between the table and the written provisions in the SMP, the written provisions shall apply.

Staff Response: As shown in SMP Table 5-1 of the Lewis County Shoreline Master Program; Residential Development is listed as a permitted use the Shoreline Residential Environment. WAC 173-27-040(2)(g) identifies the construction of a

single-family residence as exempt from the substantial development permit process, but still requires the project to meet the regulations and standards of the SMP. A letter of shoreline exemption will be conditionally approved for this project pending the final approval of the shoreline variance request by Ecology. As previously conditioned in this staff report, this requirement has been met.

SMP 5.04 Development Standards:

Density and Lot Coverage:

- A. Density and maximum lot coverage of residential uses allowed in the shoreline jurisdiction shall be in accordance with the underlying zoning requirements in the LCC.

Staff Response: The proposed project is located in the Rural Residential Center - 2 Acre (RRC-R2) zoning classification, which does not have a maximum lot coverage regulation. The subject parcel is 0.17 acres in size (7,405.20 square feet) and the proposed development will utilize a total of 2,082 square feet equaling a total lot coverage of twenty-eight percent (28%). As conditioned in this staff report, this criteria is met.

Shoreline Height:

- A. To limit the obstruction of views from public property or residences, the SMP Table 5-2: Shoreline Height Regulations sets the maximum height for new or expanded buildings or structures above average grade level in shoreline jurisdiction.

Staff Response: The Shoreline Residential Environment limits new or expanded buildings to a maximum height limit of 35 feet above average grade level. No existing or proposed buildings or structures exceed that height limit. As conditioned below these criteria have been met. The following **Conditions of Approval** shall be listed on the shoreline permit:

- New or expanded buildings in the shoreline jurisdiction have a maximum height limit of 35 feet above average grade level.

SMP 5.14 Residential Development:

Regulations

- A. Residential uses and development may be allowed in conformance with the development requirements of the County and the provisions of the SMP.
- C. Each residential structure, including accessory and appurtenant structures and uses, shall:

1. Comply with all applicable zoning regulations.
 2. Meet all applicable critical areas, vegetation conservation, and water quality standards of SMP Chapter 4: General Policies & Regulations.
 3. Be designed, sited, and constructed to:
 - a. Assure no net loss of shoreline ecological functions.
 - b. Prevent the need for new structural flood hazard management measures to the greatest extent feasible.
 - c. Be sufficiently set back from steep slopes and shorelines vulnerable to erosion, in accordance with the required critical area and shoreline buffers, to ensure that structural improvements and stabilization structures are not necessary to protect such structures and uses.
- F. Accessory and appurtenant developments and structures shall be subject to the same regulations as the primary residence. Provided that septic systems, drain fields and other accessory or appurtenant developments may be located within a critical area or shoreline buffer when no other option exists, and the proposal meets the requirements in Section 4.04.02(D).
- G. Primary residential uses are prohibited over the water.
- H. Residential accessory and appurtenant structures and uses shall be prohibited over the water, unless clearly water-dependent.

Staff Response: Residential use is an allowable use in the underlying zoning classification of Rural Residential Center - 2 Acre (RRC-R2) and within the Shoreline Residential Environment of the shoreline jurisdiction. The proposed project, as conditioned in this staff report, meets the applicable critical area, vegetation conservation and water quality standards of the SMP Chapter 4: General Policies & Regulations. The proposed project has been designed and conditioned to ensure no net loss of shoreline ecological functions. The proposed development and request to reduce the shoreline buffer to 36-feet from the OHWM will not require any new structural flood management or new shoreline stabilization structures.

No accessory structures are included as part of the shoreline variance request or the shoreline exemption (SHE24-0020). As previously reviewed in this staff report, the proposed septic system meets the criteria of SMP Section 4.04.02(D). The project does not propose for any structures to be located over the water. As conditioned in this staff report, the project meets these criteria.

SMP Chapter 6:
Shoreline Modification Regulations:

SMP 6.01 Shoreline Modification Table:

Staff Response: Table 6-1 of the SMP lists clearing and grading activities, the placement of fill landward of the OHWM, and restoration activities as permitted uses in the shoreline residential environment. These activities will be reviewed below.

SMP 6.02 Shoreline Modification Provisions:

Regulations:

- A. Structural shoreline modifications may be allowed if they are demonstrated to be necessary to support or protect a legally permitted shoreline structure or use that is in danger of loss or substantial damage or are necessary for mitigation or enhancement.
- B. Shoreline modifications shall be limited in number and extent.
- C. The Shoreline Administrator shall base all decisions regarding shoreline modification on available scientific and technical information and a comprehensive analysis of site-specific conditions provided by the applicant.
- D. Shoreline modifications must be designed and located to ensure that they will not result in a net loss of shoreline ecological functions and will not have significant adverse impacts to shoreline uses, resources, and values provided for in RCW 90.58.020.
- E. Shoreline modifications and uses shall be designed and managed to prevent degradation of water quality and alteration of natural hydrographic conditions.
- F. Shoreline modification standards shall not apply retroactively to existing, legally established shoreline modifications. Existing structures may be maintained, repaired, and operated within shoreline jurisdiction and within the shoreline buffers established in the SMP. Repair and replacement provisions in later sections of this chapter may apply to specific modifications.
- G. All disturbed upland areas shall be restored and protected from erosion by using native vegetation or other means.
- H. All shoreline modifications are subject to the mitigation sequence in SMP Section 4.03, with appropriate mitigation required for unavoidable impacts to ecological functions. If critical areas in shoreline jurisdiction are impacted, the project is also subject to relevant requirements of SMP Section 4.04.

Staff Response: The project includes shoreline modifications for the construction of a single-family residence and associated utilities. The shoreline modifications are designed to minimize the disturbance to the extent necessary for the construction

of the development. The project has been reviewed for compliance with the mitigation sequencing in SMP Section 4.03 and the relevant requirements of SMP Section 4.04. No new shoreline stabilization structures would be required as a result of this proposed project. As conditioned in this staff report, the project meets these regulations.

SMP 6.03 Clearing, Grading and Fill:

Regulations:

- A. Clearing, grading, and the placement of fill shall be minimized to the extent feasible and only allowed when necessary to accommodate an approved shoreline use or development.
- B. All clearing, grading, and the placement of fill shall be located, designed, and constructed to protect shoreline ecological functions and ecosystem-wide processes, including channel migration.
- C. Speculative clearing, grading, and the placement of fill are prohibited.
- D. When clearing, grading, or the placement of fill will cause adverse impacts to ecological functions, a mitigation plan, prepared by a qualified professional, must be completed consistent with the provisions of SMP Section 4.04.
- E. Clearing, grading, and the placement of fill within wetlands, floodways, or CMZs, and/or the placement of fill waterward of the OHWM, is only allowed when:
 1. Due consideration has been given to the site specific conditions;
 2. All impacts have been mitigated;
 3. All required State and Federal permits, and necessary approvals from WDNR for State-owned aquatic lands, have been obtained; and
 4. The shoreline use or development is one of the following:
 - a. A water-dependent use or public access to the shoreline;
 - b. The cleanup and disposal of contaminated sediments as part of an interagency environmental clean-up plan;
 - c. The disposal of dredged material considered suitable under, and conducted in accordance with, the WDNR's Dredged Material Management Program and the United States Army Corps of Engineers' (USACE) Dredged Material Management Office. See also SMP Section 6.04;
 - d. The expansion or alteration of transportation facilities of statewide significance that are currently located in the shoreline, where alternatives to fill are infeasible;
 - e. Ecological enhancement, restoration or mitigation, when consistent with an approved plan; or
 - f. The protection of historic or cultural resources when fill is the most

feasible method to avoid continued degradation, disturbance, or erosion of a site. Such fill must be coordinated with any affected tribes and comply with applicable provisions of SMP Section 4.02.

- F. Upland clearing, grading and the placement of fill outside of wetlands, floodways, and CMZs is permitted provided it:
 - 1. Is the minimum necessary to implement the approved use or modification;
 - 2. Does not significantly change the topography of the landscape in a manner that affects hydrology or increases the risk of slope failure, consistent with the applicable provisions of SMP Section 4.04; and
 - 3. Is conducted outside required shoreline buffers, unless specifically authorized by the SMP, or is necessary to provide protection to historic or cultural resources.
- G. Grading, the placement of fill, and beach nourishment shall be designed to blend physically and visually with the existing topography whenever feasible, so as not to interfere with lawful access and enjoyment of scenery.
- H. Clearing, grading, and the placement of fill shall not be located where shoreline stabilization will be necessary to protect the materials placed or removed, except when part of an approved plan for the protection of historic or cultural resources, or as part of an approved environmental cleanup plan or project.
- I. Cut and fill slopes shall generally be sloped no steeper than one foot vertical for every two feet horizontal (1:2) unless a specific engineering analysis has been provided that demonstrates the stability of a steeper slope.
- J. A temporary erosion and sediment control plan, including BMPs, consistent with the County's stormwater manual, shall be submitted to and approved by the Shoreline Administrator prior to commencement of all clearing, grading, and fill activities.
- K. To prevent a loss of flood storage, compensatory storage shall be provided commensurate with the amount of fill placed in the floodway per SMP Section 4.05.
- L. The placement of fill on State-owned aquatic lands must comply with WDNR and WDFW standards and regulations.

Staff Response: The application materials include a description of the construction methods and equipment to be used for the project (Staff Exhibit 1 - Application Documents - JARPA). As previously conditioned all proposed improvements will be located at least 36 feet landward from the OHWM of Big Creek.

The project site is not located within wetlands, floodways or the CMZ, and there is no proposed placement of fill material waterward of the OHWM or on State-owned aquatic lands. As previously conditioned in this staff report, the construction staging area and materials stockpile area shall be landward of the northern line of

the 36-foot shoreline buffer. The project will not require shoreline stabilization structures. As conditioned in this staff report, the project meets these regulations.

SMP Chapter 7:

Shoreline Administration:

SMP 7.02 Permit Processing - General:

SMP 7.02.01 Shoreline Administrator

- A. The Shoreline Administrator shall be responsible for the administration of the permit system in accordance with the requirements of the SMA and regulations adopted as part of the SMP as it pertains to the County. This shall include, but not be limited to, determinations of whether a development is exempt or requires a shoreline substantial development permit, conditional use permit, or variance.
- B. The Shoreline Administrator shall ensure that administrative provisions are in place so that SMP permit procedures and enforcement are conducted in a manner consistent with relevant constitutional limitations on regulation of private property.
- C. Administrative Interpretations
 - 1. The Shoreline Administrator shall have authority to interpret this SMP when such interpretation is clearly consistent with the goals and policies of the SMP and the SMA.
 - 2. As part of this process, the Shoreline Administrator shall consult with Ecology to insure that formal written interpretations are consistent with the purpose and intent of the SMA and Chapter 173-26 WAC.
 - 3. Formal interpretations shall be kept on file by the County and shall be available for public review, and shall periodically be incorporated into the SMP during required update processes.
- D. The Shoreline Administrator shall review every application that is submitted and determine if the application is complete based upon the information required by this section.
- E. The Shoreline Administrator may recommend conditions to the Hearing Examiner for the approval of permits as necessary to ensure consistency of the project with the SMA and the SMP.

Staff Response: The application packet and supplemental materials have been reviewed. This staff report provides recommended conditions to the Hearing Examiner for the approval of permits to ensure consistency of the project with both the SMA and the County's SMP. As conditioned in this report, the project will meet these regulations.

SMP 7.02.02 Provisions Applicable to all Shoreline Permits

- A. Unless specifically exempted by statute, all proposed uses and development occurring within shoreline jurisdiction must conform to the development standards in the LCC, Chapter 90.58 RCW, the SMA, and this SMP, whether or not a permit is required.
- C. No authorization to undertake a use or development on Shorelines of the State shall be granted by the County, unless, upon review, the use or development is determined to be consistent with the policy and provisions of the SMP.
- D. Applications for shoreline substantial development permits, conditional use permits, and variances shall be processed in accordance with the provisions of this SMP.
- E. The applicant shall meet all of the review criteria for all development found in WAC 173-27-140.
- F. A shoreline substantial development shall not be undertaken within the County unless a shoreline substantial development permit has been obtained, the appeal period has been completed, and any appeals have been resolved.
- G. All purchasers or transferees of property shall comply with the provisions of the SMA, the SMP, and any shoreline substantial development permit, conditional use permit, variance, permit revision, or letter of exemption.

Staff Response: As conditioned in this report, the project will meet these regulations.

SMP 7.02.03 Application Requirements

Applications for shoreline permits or letters of exemptions shall be made on forms provided by the Shoreline Administrator. An applicant for a shoreline substantial development permit, who wishes to request a shoreline conditional use permit or variance, shall submit the shoreline conditional use permit or variance application(s) and the shoreline substantial development permit application simultaneously. Applications shall be substantially consistent with the information required by WAC 173-27-180 and include any additional submittals deemed necessary by the Shoreline Administrator for proper review of the proposal.

Staff Response: The application form requirements have been met. The JARPA application form was submitted for the appropriate application (Staff Exhibit 1 - Application Documents; JARPA).

SMP 7.03 Application - Notices:

The following is applicable for the notice requirements of all notices related to actions

under the SMP:

- A. Within 14 days from making a determination of complete application, the Shoreline Administrator shall provide public notice of the application. Notice of environmental review under SEPA (Chapter 43.21C RCW) may be combined with the application notice.
- B. The public notice shall include:
 - 1. The date the application was made and the date the application was determined to be complete;
 - 2. A description of the proposed project action and a list of the project permits included in the subject application;
 - 3. The identification of other permits not included in the subject application, if known;
 - 4. The identification of existing environmental documents that evaluate the proposed project and where such documents may be reviewed;
 - 5. A statement of the public comment period, which shall be at least 30 days;
 - 6. The date, time, and place of the public hearing, if any;
 - 7. A statement of preliminary determination, if one has been made; and
 - 8. Any other information determined appropriate by the Shoreline Administrator.
- C. The Shoreline Administrator shall provide notice by at least one of the following noticing methods:
 - 1. Mailing the notice to the most recent real property owners within 300 feet of the property boundary of the subject proposal as shown by the records of the Lewis County Assessor;
 - 2. Posting the notice in a conspicuous manner on the property upon which the project is to be undertaken; or
 - 3. Publishing the notice in the local newspaper.
 - 4. Any other manner deemed appropriate by the Shoreline Administrator to accomplish the objectives of reasonable notice to adjacent landowners and the public.
- D. The notification system shall also provide notice to all agencies with jurisdiction in the proposal per Chapter 43.21C RCW and to all other agencies that request in writing any such notice.
- E. The Shoreline Administrator shall give notice of the application no less than 30 days prior to permit issuance.
- F. When a public hearing is required, public notice shall be given at least 15 days before the public hearing. The notice shall include a statement that a person desiring to present his/her views may do so orally or in writing at the public hearing, or may submit written comments prior to the public hearing which will be provided

to the Hearing Examiner.

- G. The public notice shall also state that a person interested in the Hearing Examiner action on an application for a permit may notify the Shoreline Administrator of his/her interest in writing within 30 days of the last date of publication of the notice. Such notification to the Shoreline Administrator or the submission of views to the Hearing Examiner shall entitle said persons to a copy of the action taken on the application.

Staff Response: Notice of shoreline application (Staff Exhibit 3) and shoreline notice of public hearing (Staff Exhibit 4) were all issued meeting the notice requirements for this project.

SMP 7.04 Shoreline Permits and Approvals:

SMP 7.04.01 Shoreline Substantial Development Permits

- A. An applicant shall meet all of the review criteria for a shoreline substantial development permit listed in WAC 173-27-150.
- B. A shoreline substantial development permit shall be granted by the Shoreline Administrator without a public hearing unless the Shoreline Administrator determines that the proposed development is one of broad public significance and requires a public hearing before the Hearing Examiner.
- C. If a public hearing is required, the Hearing Examiner shall grant a shoreline substantial development permit with conditions after the Shoreline Administrator completes a recommendation to the examiner that may contain conditions for the approval of permits as necessary to assure consistency of the proposal with the above criteria.

Staff Response: The project is exempt from the shoreline substantial development permit process, but is in compliance with the SMP criteria. A letter of shoreline exemption will be issued as conditional approval subject to the final approval of the shoreline variance request by Ecology.

SMP 7.04.03 Shoreline Variances

- A. The criteria in WAC 173-27-140 and WAC 173-27-170 shall constitute the minimum criteria for review and approval of a shoreline variance. Additional criteria may be considered when deemed necessary by the Shoreline Administrator in accordance with WAC 173-27-210.
- B. Uses that are specifically prohibited may not be authorized.
- C. The Hearing Examiner may attach conditions to the approval of the variance as necessary to assure consistency of the proposal with the above criteria.

- D. The decision of the Hearing Examiner shall be the final decision of the County. Ecology shall be the final authority authorizing a shoreline variance consistent with WAC 173-27-200.

Staff Response: The WAC for shoreline variance request review criteria is provided below. The application materials have provided an analysis of how the project is consistent with the review criteria for the variance request (Staff Exhibit 1 -Application Documents; JARPA; Project Narrative; Site Plan; Site Photos, and No Net Loss Mitigation Plan).

WAC 173-27-170 Review criteria for variance permits. *The purpose of a variance permit is strictly limited to granting relief from specific bulk, dimensional or performance standards set forth in the applicable master program where there are extraordinary circumstances relating to the physical character or configuration of property such that the strict implementation of the master program will impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020.*

(1) *Variance permits should be granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances the applicant must demonstrate that extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.*

(2) *Variance permits for development and/or uses that will be located landward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030 (2)(c), and/or landward of any wetland as defined in RCW 90.58.030 (2)(h), may be authorized provided the applicant can demonstrate all of the following:*

(a) *That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes, or significantly interferes with, reasonable use of the property;*

(b) *That the hardship described in (a) of this subsection is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the master program, and not, for example, from deed restrictions or the applicant's own actions;*

(3) *That the design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program and will not cause adverse impacts to the shoreline environment;*

- (a) That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;*
- (b) That the variance requested is the minimum necessary to afford relief; and*
- (c) That the public interest will suffer no substantial detrimental effect.*
- (4) Variance permits for development and/or uses that will be located waterward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030 (2)(c), or within any wetland as defined in RCW 90.58.030 (2)(h), may be authorized provided the applicant can demonstrate all of the following:*
 - (a) That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes all reasonable use of the property;*
 - (b) That the proposal is consistent with the criteria established under subsection (2)(b) through (f) of this section; and*
 - (c) That the public rights of navigation and use of the shorelines will not be adversely affected.*
- (5) In the granting of all variance permits/ consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example if variances were granted to other developments and/or uses in the area where similar circumstances exist the total of the variances shall also remain consistent with the policies of RCW 90.58.020 and shall not cause substantial adverse effects to the shoreline environment.*
- (6) Variances from the use regulations of the master program are prohibited.*

The subject parcel is 0.17 acres in size, is only 88 feet wide at its widest point, and is located within a residential subdivision that was established prior to both the state and local shoreline regulations. Strict implementation of the 150-foot shoreline buffer leaves no area for residential development on this existing legal lot of record.

None of the buffer reduction options provide a reasonable and adequate area to construct a single-family residence and associated utilities on the subject parcel. For example, the common line buffer reduction can only utilize the dwelling located on the eastern adjacent parcel and the standard 150-foot buffer on the vacant western parcel, not any of the other dwellings further east and west of the subject parcel to establish the common line. The common line buffer results in a diagonal line in the northern portion of the parcel leaving a small triangular buildable area of

approximately 1,072 square feet that would not meet any setbacks from public rights of way.

The variance request is to reduce the 150-foot shoreline buffer to a 36-foot shoreline buffer to allow residential development on the existing parcel, which is a preferred use in the 2021 SMP within the Shoreline Residential Environment and within the Rural Residential Center - 2 Acre (RRC-RI) zoning classification. Denial of the shoreline variance request would result in prohibiting residential development on this parcel.

The shoreline variance request does not request a variance to any prohibited uses, as residential development is a permitted use in the Shoreline Residential Environment. The proposed development will be located landward of the OHWM of Big Creek, and no development is proposed to be located waterward of the OHWM of Big Creek.

The project is compatible with other uses in the Shoreline Residential Environment and the RRC-R2 zoning classification and would not be considered a special privilege compared to other residential uses in the shoreline environment or zoning classification. The reduction of the 150-foot shoreline buffer to a 36-foot shoreline buffer and the reduction of the 15-foot building setback from the shoreline buffer to a 0-foot building setback from the shoreline buffer is the minimum necessary to allow for a residential use on this parcel. As previously reviewed and conditioned in this staff report, there is no substantial detrimental effect to the public interest by granting this variance request.

The project narrative document states that most of the lots within the Paradise Estates plat, including additions No. 2 and 3 have residences and that the area is almost at full build out (Staff Exhibit 1 - Application Documents). The adjacent parcels both north and east of the parcel have established residences that also are within the 150-foot buffer. If the four SMP buffer reduction options are not feasible based on each site's specific circumstances, then a shoreline variance request could be submitted. The future shoreline variance requests would be reviewed for compliance with RCW 90.58.020, WAC 173-27-170 and the Lewis County SMP in effect at the time of complete application submittal.

As reviewed and conditioned in this staff report, the shoreline variance portion of the project will meet these criteria.

SMP 7.05 Public Hearings and Decisions:

SMP 7.05.01 Burden of Proof For Development Conformance

- A. The burden of proving that the proposed development is consistent with the criteria set forth in the SMP, as well as the requirements of the SMA shall be on the applicant.

Staff Response: The JARPA application, the project narrative, No Net Loss Mitigation Plan, site plan, and site photos submitted by the applicant (Staff Exhibit 1 - Application Documents) provide the applicant's burden of proof statements. This criterion has been met.

SMP 7.05.02 Public Hearing Process

- A. The Hearing Examiner shall hold a single open record public hearing for each application that requires a public hearing. This open record hearing shall combine any hearings for a shoreline conditional use permit or variance, and each substantial development permit where the conditions of SMP Section 7.04.01(A) are met. The Hearing Examiner will make the final decision on the proposal at a closed record hearing.
- B. If, for any reason, testimony on a matter set for public hearing, or being heard, cannot be completed on the date set for such hearing, the Hearing Examiner may, before adjournment or recess of such matters under consideration, publicly announce the time and place of the continued hearing and no further notice is required.
- C. When the Hearing Examiner renders the final decision, the Hearing Examiner shall make and enter written findings from the record and conclusions thereof, which support the decision. The findings and conclusions shall set forth the manner in which the decision is consistent with the criteria set forth in the SMA and County regulations.

Staff Response: The open record hearing before the Lewis County Hearing Examiner is scheduled for January 10, 2025 at 9:00 am, or immediately thereafter. This hearing is the only item on the docket. Once the decision is issued, it will be transmitted to Ecology in the appropriate format meeting these criteria.

Staff Report Conclusions:

After review of the shoreline permit application, its drawings, site plans, designs, reports, studies and mitigation plans, the following are staff conclusions regarding the proposed project.

The project complies with the State Environmental Policy Act, the Lewis County Code (LCC) Chapter 17.38 (Critical Areas), the applicable provisions of the 2021 Lewis County Shoreline Master Program, RCW 90.58 and WAC 173-27.

Shoreline Permit Recommendation:

The staff recommendation is the Hearing Examiner approve the shoreline variance request with appropriate conditions citing specific regulations from the above referenced master program provisions and forward the local approval to the Washington State Department of Ecology with the recommendation of final approval. The following are recommended permit development terms and conditions (Conditions of Approval):

1. The applicant/ property owner shall comply with the conditions of development identified in the Master Site Review file number MSR24-0439. If there is a conflict between the MSR conditions of approval and another permit's conditions of approval, the more restrictive conditions of approval shall apply.
2. The applicant/ property owner shall comply with the conditions of development identified in the Letter of Shoreline Exemption file number SHE24-0020. If there is a conflict between the Shoreline Exemption's conditions of approval and another permit's conditions of approval, the more restrictive conditions of approval shall apply.
3. In the event any archaeological or historic materials are encountered during project activity, work in the immediate area (initially allowing for a 100 foot buffer) must stop and the following actions taken: 1) Implement reasonable measures to protect the discovery site, including any appropriate stabilization or covering; 2) Take reasonable steps to ensure the confidentiality of the discovery site; and 3) Take reasonable steps to restrict access to the site of discovery.
4. The project proponents will notify the concerned Tribes and all appropriate county, state, and federal agencies, including the Department of Archaeology and Historic Preservation (DAHP). The agencies and Tribe(s) will discuss possible measures to remove or avoid cultural materials, and will reach an agreement with the project proponent regarding actions to be taken and disposition of material.
5. If human remains are uncovered, appropriate law enforcement agencies shall be notified first, and the above steps will be followed. If the remains are determined to be Native, consultation with the affected Tribes will take place in order to mitigate the final disposition of said remains.

6. No vegetation removal or ground disturbance is authorized in the area between the ordinary high water mark and the northern line of the 36-foot shoreline buffer.
7. Temporary construction fencing to identify the construction limits shall be installed on the northern line of the 36-foot shoreline buffer prior to any ground disturbance.
8. Ground disturbance is limited to that necessary for implementation of project elements.
9. The construction staging area and materials stockpile area shall be landward of the northern line of the 36-foot shoreline buffer.
10. The mitigation plantings within the 36-foot shoreline buffer shall be planted prior to final inspection of the building permit for the single-family residence. The mitigation plantings compensating for the removal of vegetation in the development site shall be provided at a 1:1 ratio.
11. The property owner shall ensure at least a 90% continuing survival rate of the mitigation plantings, and replant any of the trees and/or shrubs that do not survive the initial planting.
12. Future development shall be limited as shown on the shoreline variance request site plan (Staff Exhibit 1 - Application Documents; Site Plan).
13. The applicant shall obtain all other required local, state and federal permits and approvals.
14. The temporary erosion and sedimentation control measures will be implemented at the beginning of the construction process. The written temporary erosion and sedimentation control plan, including BMPs, shall be submitted to and approved by the shoreline administrator prior to issuance of the building permit for the single-family residence.
15. BMPs will include covering of exposed soils, managing runoff, and revegetating temporary disturbed soils as soon as possible following the onset of construction.
16. Potentially harmful materials, including but not limited to oil, chemicals, tires, or hazardous materials, shall not be allowed to enter any body of water or wetland, or be discharged onto the land in shoreline jurisdiction, including any ditch, swale or other non-impervious surfaced area where migration to the aquifer is a reasonable likelihood. Potentially harmful materials should be stored outside of shoreline jurisdiction if feasible, and shall be maintained in safe and leak-proof containers.
17. Herbicides, fungicides, fertilizers, and pesticides shall not be applied within 25 feet of a water body, except by a qualified professional in accordance with State and Federal laws. Further, pesticides subject to the final ruling in *Washington Toxics Coalition, et al., v. EPA* shall not be applied within 60 feet for ground applications or within 300 feet for aerial applications of the subject water bodies and shall be

- applied by a qualified professional in accordance with State and Federal law.
18. All outdoor lighting shall be hooded and shielded to prevent glare as seen by adjacent properties, vehicles on public roadways and to minimize potential effects on wildlife.
 19. New or expanded buildings in the shoreline jurisdiction have a maximum height limit of 35 feet above average grade level.

Staff Report Exhibit List:

- Staff Exhibit 1: Subheading - "Application Documents" which include the JARPA form, site plan, MSR application, letter from Lewis County Community Development Department - pending MSR, habitat assessment report, comments received from WDFW and comments received from ECY with follow up correspondence from the County <https://lewiscountywa.gov/departments/community-development/current-planning-applications/shd24-0002-welsh-shoreline-variance/>
- Staff Exhibit 2: Complete Application Letter
- Staff Exhibit 3: Shoreline Notice of Application
- Staff Exhibit 4: Shoreline Notice of Public Hearing